

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE DISTRICT OF COLUMBIA WATER AND SEWER
AUTHORITY,
ARLINGTON COUNTY, VIRGINIA
AND THE CITY OF FALLS CHURCH, VIRGINIA
AND BETWEEN
THE DISTRICT OF COLUMBIA WATER AND SEWER
AUTHORITY,
ARLINGTON COUNTY, VIRGINIA,
THE CITY OF FALLS CHURCH, VIRGINIA,
AND THE DEPARTMENT OF THE ARMY, ACTING THROUGH
THE CHIEF OF ENGINEERS**

WHEREAS ownership of the Washington Aqueduct is under the administrative jurisdiction of the Department of the Army and the Department of the Army is required to operate the Washington Aqueduct consistent with applicable Federal statutes and regulations; and

WHEREAS an Act of Congress dated March 3, 1859 [11 Stat 84] placed the care, management, and superintendence of the Washington Aqueduct under the Chief of Engineers of the United States Army Corps of Engineers; and

WHEREAS pursuant to that Act the Chief of Engineers is responsible for supplying water in the City of Washington, D. C., for use by the Federal Government and for the use and benefit of the inhabitants of the City of Washington, D. C.; and

WHEREAS an Act of Congress dated April 14, 1926 (Pub. L. 119-79th Congress) permits the delivery of water from the Washington Aqueduct to Arlington County, Virginia; and

WHEREAS an Act of Congress dated June 26, 1947 (Pub. L. 310-80th Congress) permits the delivery of water from the Washington Aqueduct to the City of Falls Church, Virginia; and

WHEREAS the City of Washington, D. C., acting through the District of Columbia Water and Sewer Authority, an independent authority of the Government of the District of Columbia; and Arlington County, Virginia; and the City of Falls Church, Virginia, hereinafter referred to as "the Wholesale Water Customers", have entered into separate Water Sales Agreements with the Army that obligates the purchaser to pay its proportional share of the Army's costs of operating and maintaining the Washington Aqueduct; and

WHEREAS the Chief of Engineers relies upon the revenues generated from the three Water Sales Agreements to pay all such costs; and

WHEREAS The Wholesale Customers desire to create a mechanism by which they can jointly relate to the Army concerning the cost, quality, and availability of the water purchased through their Water Service Agreements; and *WHEREAS* Congress enacted section 306 of Pub. L. 104-182, which encourages the Wholesale Water Customers to pursue options regarding the ownership, operation, maintenance, and management of the Washington Aqueduct; and

WHEREAS the Wholesale Water Customers and the Army have determined that a desirable option is for the ownership, operation, maintenance, and management of the Washington Aqueduct to remain with the Army Corps of Engineers, hereinafter referred to as "the Army", and for the creation of a stable and mutually beneficial partnership among the Wholesale Water Customers and between the Wholesale Water Customers and the Corps of Engineers.

NOW, THEREFORE the parties agree as follows:

ARTICLE I - AGREEMENT TO BE BOUND

The Wholesale Water Customers agree to be bound by Articles II and IV through XI of this Agreement. The Army agrees to be bound by Articles III through XI of this Agreement.

ARTICLE II - INTERJURISDICTIONAL AGREEMENT

SECTION 1 - WHOLESALE CUSTOMERS BOARD. In order to foster a stable and mutually beneficial partnership among the Wholesale Water Customers, the Chief Administrative Officers of the Wholesale Water Customers agree to meet together as a Wholesale Customers Board, hereinafter referred to as "the Board", which shall serve as the mechanism for the Wholesale Water Customers to jointly relate to the Army on issues concerning, *inter alia*, the cost, quality, and availability of the water furnished by the Army from the Washington Aqueduct to the Wholesale Water Customers and the operation of the Washington Aqueduct, and other matters of mutual concern regarding the Washington Aqueduct.

SECTION 2 - LIMITATIONS OF BOARD. The Customer Board is not a political subdivision of any or all of the Wholesale Customers but only serves as a mechanism for the Wholesale Customers, as individual wholesale purchasers of drinking water, to communicate jointly with the Army, as seller, on matters pertaining to the availability, quality, cost and other matters related to the purchased service. As such, the board can neither sue or be sued. The Customer Board is not liable to third parties for the acts or omissions of the Army, regardless of whether the Army's actions or omissions were consistent with the Wholesale Customers' views. The Customer Board may not enter into contracts or own property in its name, nor hire its own employees.

SECTION 3 - CHAIRPERSON OF THE BOARD. The position of Board Chairperson shall be held by a Member of the Customer Board for a one year term and shall rotate among the three jurisdictions in the following order: the District of Columbia Water and Sewer Authority, Arlington County, Virginia, and the City of Falls Church, Virginia.

SECTION 4 - BOARD MEETINGS: INTERNAL OPERATING RULES.

(a) Subject to subsection (b), the Board shall meet (i) no later than 30 calendar days after the submission by the Army of a proposed Operating Budget and Revised 5-Year Capital Improvement Plan, hereinafter referred to as "the Revised Plan", pursuant to Article IV, section 1 of this Agreement to accept, reject, or recommend modification to the proposed budget; (ii) at the written request of a Board Member to the Chairperson; or (iii) whenever the Board Chairperson considers necessary.

(b) The Chairperson shall confer with the other Board members before setting a meeting date and time; and, to the maximum extent practicable, shall not schedule a meeting on a date and time when a Board Member is not available. The Chairperson shall, to the maximum extent practicable, provide each Board Member with written notice of a meeting not less than 10 calendar days before the meeting date, together with a proposed agenda.

(c) A Board Member may designate a person to attend a board meeting and act in the Member's place. Whenever possible, the non-attending Board Member shall notify the Board Chairperson of a designation prior to the meeting date.

(d) The Board may adopt such other internal operating rules for conducting its meeting, including, but not limited to, provisions for public comment at such meetings.

(e) All meetings of the Board, including any meeting at which any official action is taken, shall be open to the public, with normal provisions for executive session as permitted by law. Any one of the Wholesale Water Customers may distribute agendas for the meetings, provide notice of the meetings, and make available non-privileged staff reports prepared in anticipation of Board meetings as the such Wholesale Water Customer deems advisable.

SECTION 5 - QUORUM AND VOTING. Two Board Members must be in attendance to constitute a quorum for the transaction of business. No action may be undertaken by the Board in the absence of a quorum. Each Member of the Board shall have one vote on matters coming before the Board. Decisions of the Board shall be made by a simple majority vote, except that the District of Columbia Water and Sewer Authority must be included in the majority in order for the Board to approve, or recommend a modification to, a proposed annual operating budget; and a unanimous vote of all three board members shall be required in order for the Board to approve or to recommend modifications to the Revised Plan; to approve changes in the rate allocation formula; or to approve a proposed agreement between the Army and a regulatory or enforcement agency which would require the Army to undertake a capital improvement or modify the operation of the Washington Aqueduct if the capital improvement or operation modification does not

represent the least costly means of satisfying a permit or statutory requirement, as defined in Article V of this Memorandum of Understanding.

SECTION 6 - TECHNICAL COMMITTEE.

(a) The Board shall establish a Technical Committee which shall constitute the mechanism for the Wholesale Water Customers to exchange informally information and views with the Army concerning operation of the Washington Aqueduct, long-range and strategic planning, and relevant Federal and State legislation and rulemaking concerning the Washington Aqueduct. Each member of the Customer Board shall designate one or more persons to serve on the technical Committee, who may be the Board member and/or individuals from the Board member's staff. The Technical Committee shall attempt to reach consensus with the Army on matters which the Army submits to the Board pursuant to Article IV of this Agreement.

(b) The position of Technical Committee Chairperson shall be held by a member of the Technical Committee for a one year term. The position shall be held by a member representing a different Wholesale Customer each year and shall rotate in the following order: the City of Falls Church, the District of Columbia Water and Sewer Authority, and Arlington County.

(c)(1) The Technical Committee shall meet at least quarterly. The Technical Committee Chairperson shall call a special meeting at the written request of another Technical Committee Member or whenever the Technical Committee Chairperson considers necessary, provided that the Chairperson shall confer with the other Technical Committee members before setting a date and time for a special meeting and shall, to the maximum extent practicable, not schedule a special meeting at a date and time when a Technical Committee Member is not available.

(2) The Chairperson shall, to the maximum extent practicable, provide each Technical Committee Member and the Army with written notice of a meeting not less than ten calendar days before the meeting date, together with a proposed agenda. At least two Technical Committee members representing different Wholesale Customers and one or more of the members of the Washington Aqueduct staff referenced in Article III, section 2 of this Agreement must be in attendance in order for a meeting to take place.

(3) The Technical Committee shall not have the independent authority to require the Army to take, or refrain from taking, any action.

ARTICLE III - RELATIONSHIP BETWEEN THE ARMY AND THE WHOLESALE WATER CUSTOMERS

SECTION 1 - The Army agrees to work closely in consultation and coordination with the Board on the issues referenced in Article II, section 1 of this Agreement. The Army

Corps of Engineers, further agrees to adhere to the recommendations of the Board on matters referenced in Article IV of this Agreement to the extent provided in Article IV.

SECTION 2 - The Army agrees to make members of the professional and technical staff of the Washington Aqueduct available to meet regularly with the Technical Committee established pursuant to Article II, section 5 of this Agreement to informally exchange information and views concerning operation of the Washington Aqueduct, long-range and strategic planning, and relevant Federal and State rulemaking impacting/concerning the Washington Aqueduct.

SECTION 3 - The Army shall afford the Board an opportunity to provide periodic evaluation reports concerning the General Manager of the Washington Aqueduct. Such reports shall be submitted to the District Commander, Baltimore District, United States Army Corps of Engineers. The Army shall consult with the Board prior to hiring a General Manager for the Washington Aqueduct after the effective date of this Memorandum of Understanding, and shall permit the Customers to participate in the interview process and shall take the views of the Board into consideration in making a selection for that position.

SECTION 4 - The Army, including the Washington Aqueduct, is not liable to third parties for acts or omissions of the Wholesale Water Customers or their representatives.

ARTICLE IV - GENERAL PROVISIONS

SECTION 1 - SUBMISSION OF ANNUAL OPERATING BUDGET AND REVISED CAPITAL PLAN.

(a) At a date each year that allows sufficient time for review by the Technical Committee and the Wholesale Customer Board, the Army, through the General Manager of the Washington Aqueduct, shall submit a proposed annual operating budget, hereinafter referred to as the "Operating Budget", for the forthcoming fiscal year and any proposed revisions to the Revised Plan to each Member of the Board. For items exceeding a cost threshold established by the Board, the Army shall state whether each proposed capital improvement on the Revised Plan represents the least costly means of accomplishing the intended objective. If a particular proposed capital improvement does not represent the least costly means of accomplishing the intended objective, the Army shall identify the less expensive alternatives rejected and state why the more costly option was chosen.

(b) The Board may vote to accept, reject, recommend modifications to, or postpone its considerations of the proposed Operating Budget or Revised Plan.

(c) If the Board rejects the proposed Operating Budget or Revised Plan or fails to take any action on the proposed Operating Budget or Revised Plan within 30 days after receipt of the Operating Budget or Revised Plan from the Army, the Army shall continue to operate the Washington Aqueduct consistent with the Operating Budget or Capital Improvement Plan in effect at the time the Operating Budget or

Revised Plan was submitted to the Board, with any adjustments required to meet outstanding financial obligations, unless the Army provides a written determination and findings that operation of the Washington Aqueduct in accordance with the proposed Operating Budget or Revised Plan is necessary to comply with applicable laws, regulations or permits or is necessary to comply with contractual agreements or is necessary to protect the public health.

(d) Should the Board recommend a modification to a proposed Operating Budget or Revised Plan, the Army shall proceed with the Operating Budget or Revised Plan as modified, unless the Army provides a written determination and findings that non-adherence to the recommendation is necessary to comply with applicable laws, rules, or permits, necessary to comply with contractual obligations, or necessary to protect the public health. If the Army makes this determination and findings, the Army shall proceed with its proposed Operating Budget or Revised Plan, but shall include any Board recommended modifications that were not the subject the Army's determination and findings.

(e) The Army may agree to undertake capital improvements for one or more of the Wholesale Water Customers upon the request of the Wholesale Water Customer, provided that such capital improvements shall be undertaken at no cost to the other Wholesale Water Customers and the General Manager of the Washington Aqueduct certifies to the Board that the requested capital improvement will not degrade the service of the other Wholesale Water Customers and will not result in a system-wide cost increase.

SECTION 2 - NOTICE REGARDING DRAFT PERMITS, PERMIT VIOLATIONS, AND THE SUBMISSION OF CERTAIN AGREEMENTS.

(a) The Army shall furnish the Board with immediate notice of the proposed issuance of a permit or permit modification for the Washington Aqueduct; a potential or actual permit violation at the Washington Aqueduct; the issuance of a notice of permit violation at the Washington Aqueduct, or any correspondence threatening such issuance; any proposed consent agreement or decree, compliance order, or memorandum of understanding concerning a proposed or existing permit held by the Department of the Army for the Washington Aqueduct.

(b) The Army shall, to the maximum extent practicable, consult with the Board prior to responding to, or entering into any proposed consent decrees or orders, or before entering into a written agreement or understanding of any kind which would impact the Wholesale Water Customers.

(c) (1) The Army shall submit a proposed agreement with a regulatory or enforcement agency to the Board if:

- (A) The agreement would require the Army to undertake a capital improvement to, or modify the operations of, the Aqueduct;
 - (B) The cost of the capital improvement or operational modification exceeds an amount previously established by the Board; and
 - (C) The Army determines that the capital improvement or operational modification does not represent the least costly means of satisfying the permit or statutory requirement which is the subject of the agreement.
- (2) The Army may proceed with an agreement submitted to the Board pursuant to this subsection unless the Customer Board votes to reject the agreement within thirty (30) days after submission.
- (d) The Customers reserve whatever rights they otherwise have to challenge any permits, orders, decrees, agreements, or understandings covered in this Section.

SECTION 3 - RATE ALLOCATION STUDY. Upon request of a Board Member, but not less than three years from the date of the last such request, the Army shall perform and furnish the Board with a preliminary analysis of the fairness and accuracy of the existing rate allocation formula. The Board shall review the preliminary analysis and may, after its review, request the Army to undertake a full study of the fairness and accuracy of the existing rate allocation study. Upon the request of the Board, the Army shall revise the rate allocation formula if, following a review of the full study, the Board votes unanimously in favor of a revision to the formula, as required pursuant to Article II, section 4 of this Agreement.

SECTION 4 - ANNUAL FINANCIAL REPORT. The Army shall submit an annual financial report to the Board detailing the financial activities for the Washington Aqueduct during the most recently completed Federal Fiscal Year. The reports shall be submitted to the Board no later than April 1st of the succeeding Fiscal Year.

ARTICLE V - DEFINITIONS

For the purposes of this Memorandum of Understanding, the following terms shall mean:

CHIEF ADMINISTRATIVE OFFICER - The County Manager of Arlington County, Virginia, the City Manager of the City of Falls Church, Virginia, and the General Manager of the District of Columbia Water and Sewer Authority.

WASHINGTON AQUEDUCT. - The Washington Aqueduct facilities and related facilities under the administrative jurisdiction of the Department of the Army, including, without limitation, the dams, intake works, conduits, and pump stations that capture and transport raw water from the Potomac River to the Dalecarlia Reservoir; the infrastructure and appurtenances used to treat water taken from the Potomac River to potable standards; and related water distribution facilities.

REVISED PLAN. - The Five-Year Capital Plan attached hereto as Exhibit A, as it may be subsequently revised.

LEAST COSTLY ALTERNATIVE - That alternative, as determined by professional engineering analysis (considering all components of cost over a defined life cycle, including the time value of money expended in a series of payments), which has the lowest total cost of multiple technically feasible alternatives.

BOARD MEMBER. - A duly appointed Member of the Customer Board, or a person designated by a Board Member to act in his/her place.

ARTICLE VI - DURATION OF AGREEMENT: AMENDMENTS

This Memorandum of Understanding shall remain in effect until terminated by any of the parties hereto as provided for in Article VII and may be amended only upon the written agreement of the parties.

ARTICLE VII - TERMINATION

A party desiring to terminate this Memorandum of Understanding shall be required to notify each of the other parties in writing of its intent to terminate. The written notice of intent to terminate shall be forwarded to the other parties by registered mail, return receipt requested. The effective date of the termination shall be no earlier than six months after receipt of such notice by the other parties.

ARTICLE VIII - NOTICES

Any notice or request which, under the terms of this Memorandum of Understanding, must or may be given or made by the parties hereto, shall be in writing and shall be delivered to:

For Arlington:

Office of the County Manager
Arlington County Government
2100 Clarendon Boulevard, Suite 302
Arlington, Virginia 22201

For Falls Church:

Office of the City Manager
Falls Church City Government
300 Park Avenue
Falls Church, Virginia 22046

For the District of Columbia Water and Sewer Authority:

Office of the General Manager
District of Columbia Water and Sewer Authority
5000 Overlook Avenue, S. W.
Washington, D. C. 20032

For the Department of the Army:

Washington Aqueduct Division
5900 McArthur Boulevard N.W.
Washington, D.C. 20315-0220
Chief, Washington Aqueduct
U.S. Army Corps of Engineers

Changes to a party's address can be effected by a notice of such change, by registered mail with return receipt requested, to all the other parties.

ARTICLE IX - COUNTERPARTS

This Memorandum of Understanding shall be executed in quadruplicate, each counterpart being an original.

ARTICLE X - EFFECTIVE DATE

This Memorandum of Understanding shall take effect upon the date of execution by the parties hereto.

ARTICLE XI - AUTHORITY TO ENTER INTO MEMORANDUM OF UNDERSTANDING

The parties hereto represent that they have the authority to enter into this Memorandum of Understanding and that the individuals signing this Memorandum of Understanding have the requisite power and authority to bind the parties to the terms and provisions contained herein. Nothing herein shall be construed to require an appropriation of funds of any of the Customers. This Memorandum of Understanding is not intended to create nor does it create a third party beneficiary contract.

ARTICLE XII - RESERVATION OF RIGHTS

The respective rights of the Parties regarding the Washington Aqueduct, as those rights existed on the effective date of this Agreement, shall neither be extinguished nor altered as a consequence of the creation or termination of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Understanding on this 5th day of May 1998.

William T. Donahue
Acting County Manager
Arlington County, Virginia

Hector A. Rivera
City Manager
City of Falls Church, Virginia

Jerry N. Johnson
General Manager
District of Columbia Water and
Sewer Authority

Joe N. Ballard
Lieutenant General, USA
Commander,
US Army Corps Engineers